tenant; that the premises in question were rent-controlled and the matter could not be disposed off by summons in chambers in an action which was concluded as far back as 1957; and that the plaintiffs should commence a new action to recover possession of the premises.

Counsel for the plaintiffs submitted that the plaintiffs had already obtained judgment and an order for possession of the premises but the said judgment and order were suspended for the duration of the lease provided that the defendant paid her rent regularly.

It seems to me that the matter is clear beyond all doubt. Under the judgment the defendant was ordered to give up possession of the premises forthwith but the judgment was not to be enforced during the residue of the term if the defendant paid her rent regularly before the 21st day of each month. The lease expired on the 29th February, 1964, and the judgment became enforceable upon the expiry of the lease. The defendant who has refused to give up possession, is clearly a trespasser as from the date of the expiry of the lease. The question of the premises being rent-controlled or otherwise does not arise at this stage of the proceedings. It is a matter which has already been dealt with at the trial and is therefore now closed. The defendant is bound by the judgment of 16th July, 1957, which is now enforceable against her. For these reasons I made an order in terms of the application.

Order in terms of application.

Solicitors: *Allen & Gledhill*; *L. M. Ong.*

DIN v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. (Malaya), Tan Ah Tah F.J.) May 22, 1964]

[Ipoh — Federal Court Criminal Appeal No. 16 of 1964]

Evidence — Rape — Lack of corroboration of evidence of complainant — Whether fatal to conviction.

Penal Code, s. 376 — Rape — Conviction on evidence of complainant — When corroboration necessary — Whether corroboration required because of nature of witness or nature of offence.

The rule relating to corroboration (in rape cases) like most of the other rules of our law of evidence which are based on accumulated human experience and common sense is not a purely technical rule contravention of which is fatal to a conviction.

The desirability for corroboration of the evidence of the prosecutrix in a rape case (which in any event has not yet crystallized into something approaching a rule of law and which is still a rule of practice and prudence) springs not from the nature of the witness but from the nature of the offence. The necessity for corroboration, generally speaking, is not so imperative with regard to the identity of her assailant as to the fact of the offence itself. Though it might be dangerous to find the *factum* of rape on the uncorroborated evidence of the prosecutrix, once that *factum* of rape is established there seems to be nothing left to support the view that her identification of the assailant calls for corroboration any more than it would in relation to any other type of offence.

Cases referred to:—

(1) *Baskerville's case* [1916] 2 K.B. 658.

(2) *Graham* 4 Cr. App. R. 218, 221.

(3) *Crocker* 17 Cr. App. R. 46, 48.

FEDERAL COURT.

A. Mahendran for the appellant.

Mohamed bin Ya'acob (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment): This appellant was convicted in the High Court at Ipoh for the rape of a woman, Soh Lee Heok, at Trong in the District of Larut and Matang, in the State of Perak, on 23rd August, last year, in contravention of section 376 of the Penal Code and was sentenced to four years' imprisonment and six strokes of the cane.

Against that conviction and sentence he has now appealed.

The prosecutrix is an unmarried woman, aged 29, employed as a domestic servant. On the night of 22nd/23rd August her employers were away from home and she was sleeping in their house with her younger sister. Her story was that about 10.30 p.m. she went to bed dressed in a blouse and trousers. About 3.00 a.m. she woke up and found two men in the room, one of whom was the appellant whom she did not know before. He was naked, however, and she observed a body mark on his shoulder. He held her by the throat and threatened her with a knife. He made her lie down and had sexual intercourse with her. She was unable to struggle as all the time he was holding his knife to her person.

When he had accomplished his purpose the appellant and his companion left the house. The prosecutrix shouted for help and the watchman came and called the next door neighbours. She then went to the Police Station where she made a complaint. In that complaint she said nothing about being raped; what she said was that thieves had broken into the house; one of them had caught her by the neck and told her not to make any report. Then they took a watch and some money and departed. They were both Malays and she could recognize them again.

A little later police officers went to the scene of the alleged offence and on the cover of the bed on which the prosecutrix said the offence was committed they found fresh stains. They also found a pair of trousers which the prosecutrix said she had been wearing and these also had stains. Both sets of stains on subsequent laboratory examination were found to be seminal.

The prosecutrix was then sent to the hospital where she was examined by two doctors. They

found injuries, longitudinal abrasions, on both sides of the neck which could have been caused in a struggle by a hand holding the neck. They could, however, find no signs of recent sexual intercourse and there were no injuries to the private parts; the pubic hairs were not matted and no spermatozoa were found in the vagina. The hymen was ruptured but this was not recent. In short this evidence did not support in any way that the woman had had sexual intercourse within the previous twelve hours but on the other hand it did not negative such a possibility.

The following day the appellant was arrested and the day after the prosecutrix identified him without hesitation at a police identification parade. In her evidence she said she recognized him by his face and by the mark on his body.

That was the case for the prosecution. The appellant made a statement from the dock in which he denied having gone to the house at all and said that on the night in question he was at home sleeping with his wife. He called no witnesses. The defence, in effect, was mistaken identity and no other issue was raised in the course of the trial.

The trial judge adopted what, with respect, we consider the proper approach in cases of this nature. First of all he applied his mind to the question of whether or not the prosecutrix had been raped and then he turned to the question of whether or not it was the appellant who raped her.

On the question of rape or no rape he formed the opinion that the prosecutrix was a witness of truth and he found that her evidence was supported by the presence of seminal stains on the bed on which she had been lying and on the trousers she had been wearing. He regarded the medical evidence as showing that she could have been penetrated without apparent injury to her private parts and he treated her own evidence of not having had previous sexual intercourse with a man as something one might well expect from an unmarried woman and not as something substantially detracting from her credibility. On this part of the case we see no reason to quarrel with the Judge's view, particularly in view of the further evidence that the prosecutrix had signs of injury on her neck which went to support her story of a struggle.

Coming to the identification of the appellant the Judge fully recognised that there was no support whatsoever for the evidence of the prosecutrix that it was the appellant who attacked her. After a comprehensive appraisement of her evidence, however, he came to the conclusion that it was true.

Having come to these conclusions he convicted the appellant.

The main ground on which the conviction has been attacked is that the Judge misdirected himself on the question of corroboration. It was argued that in every case of rape it is a rule of practice and of prudence, though not of law, that the trier of fact (in this case the Judge) should be warned or should warn himself of the danger of convicting in the absence of corroboration and that in this connection corroboration means corroboration as defined in *Baskerville's* case,[1] that is independent testimony on a material particular implicating the accused.

Now in our view this proposition is too wide. The rule relating to corroboration, like most of the other rules of our law of evidence, is not a purely technical rule contravention of which is fatal to a conviction. The rules of evidence are not rules for governing a forensic game of chess; they are rules for the administration of justice and they are based on accumulated human experience and common sense. That particularly applies to the rules relating to corroboration.

In the case of accomplice evidence the need for corroboration arises from the nature of the witness who is somebody who may have an interest in making out the guilt of another in preference to his own. Again in the case of children's evidence the need arises from the notorious unreliability of children as witnesses and in particular their known aptitude to confuse fact with fantasy. Neither in the case of accomplices nor children, however, is there any connection with the nature of the offence. The evidence of an accomplice or of a child calls for corroboration just as much in a case of assault or theft as in a case of murder.

But the desirability for corroboration of the evidence of the prosecutrix in a rape case (which in any event has not yet crystallized into something approaching a rule of law and which is still a rule of practice and of prudence) springs not from the nature of the witness but from the nature of the offence. Never has it been suggested that the evidence of a woman as such invariably calls for corroboration. If a woman says her handbag has been snatched and if she is believed there can be no question of a conviction on such evidence being open to attack for want of corroboration. If, however, she complains of having been raped then both prudence and practice demand that her evidence should be corroborated.

Here, however, the necessity for corroboration, generally speaking, is not so imperative with regard to the identity of her assailant as to the fact of the offence itself. It is here that there is danger. The temptations of a woman to exaggerate an act of sexual connection are well known and manifold. But though it might be dangerous to find the *factum* of rape on the uncorroborated evidence of the prosecutrix once that *factum* of rape is established there seems to be nothing left to support the view that her

identification of the assailant calls for corroboration any more than it would in relation to any other type of offence.

Some support for this view is to be found in such reported cases as there are. It is to be remembered, however, that the reported cases where the prosecutrix is a young girl afford little assistance for in such cases corroboration is necessary not only by reason of the nature of the offence but by reason of the prosecutrix being a child whose evidence as such calls for corroboration in relation to any offence.

We would, however, refer to the cases of *Graham* [2] and *Crocker*.[3] In the case of *Graham* the appellant was convicted for having carnal knowledge of a girl under 16 years of age. The only evidence was that of the prosecutrix herself and the evidence of a doctor as to his examination of her which of course did not implicate the appellant in any way. In the course of his judgment dismissing the appeal Channell J. said this:—

"Undoubtedly, there was corroboration of parts of the girl's story. For instance, the doctor negatived the possibility of the use of mechanical means; and, under the circumstance, that was corroboration of a part of her evidence, although it was not corroboration of the part in which she put the blame on the prisoner."

In *Crocker's* case, which is about 10 years later, the appellant was convicted for some sort of sexual offence against a girl, although rather curiously the report does not say what the offence was. Nevertheless the question of corroboration arose and the Chief Justice (who was then Lord Hewart) said this:—

"The law regarding the corroboration of the evidence of accomplices has been referred to."

He then mentioned *Baskerville* and went on:—

"Now that is the law regarding the evidence of accomplices, but this Court cannot accept the contention that the evidence of a girl, the victim of the offence, is on the same plane with that of the evidence of an accomplice. The objection in such a case as this is not on the grounds of complicity, but because the case is one of an oath against an oath."

In other words it is a case of which story is to be preferred and it seems to follow from this that corroboration of any part of the prosecutrix's story is *pro tanto* of some value.

In the circumstances we find ourselves compelled to dismiss the appeal.

Appeal dismissed.

THE SHELL COMPANY OF THE FEDERATION OF MALAYA LTD. v. COMMISSIONER OF THE FEDERAL CAPITAL OF KUALA LUMPUR

[O.C.J. (Ong J.) May 29, 1964]

[K.L. — Originating Motion No. 19 of 1963]

Rating — Underground fuel tanks — Whether part of land as to be rateable — Definition of 'land' — Whether definition of 'building' excludes their rateability — Town Boards Enactment (Cap. 137), ss. 2 and 32 — Land Code (Cap. 138), s. 2 — Interpretation and General Clauses Ordinance, 1948.

The appellants are the owners of holdings under which are constructed tanks for the storage of petrol. The tanks are buried two feet below ground level and are turfed over or covered with concrete or macadam. To remove them, the turf, concrete or tarmacadam has to be taken up, the earth excavated, the concrete manhole boxes removed, all pipe connections unbolted and the tank with its concrete sinker weights then raised with blocks and tackle. The respondent, in determining the annual value of the holdings, included the value attributable to the underground storage tanks.

On appeal, the appellants contended that the tanks did not fall within the definition of 'building' and as such could not be or form part of 'a holding' and therefore not rateable. The respondent contended that the tanks had become part of the land as fixtures and as such was within the definition of 'holding' and therefore rateable.

Held: the underground tanks are land within the definition of 'land' in the Land Code and as land they are rateable;

Observations on meaning of "land" and "building" for the purposes of rating.

Cases referred to:—

(1) *The Shell Co. of the Federation of Malaya* v. *President, Town Council, Bandar Penggaram, Batu Pahat* [1962] M.L.J. 277.

(2) *Shell-Mex & B.P.* v. *Holyoak* [1959] 1 All E.R. 391; [1959] 1 W.L.R. 188.

(3) *Toronto Corporation* v. *Consumers' Gas Company of Toronto* [1916] 2 A.C. 618.

(4) *Goh Chong Hin & Anor.* v. *Consolidated Malay Rubber Estates Ltd.* 5 F.M.S.L.R. 86.

(5) *Chua Sai Ngoh* v. *Beh Ai Meng* [1955] M.L.J. 167.

(6) *Holland* v. *Hodgson* L.R. 7 C.P. 328; 335.

APPEAL against Rating Assessment.

A. L. Hills for the appellants.

Yong Pung-How for the respondent.

Cur. Adv. Vult.

Ong J.: This is an appeal by the Shell Company against rating assessments imposed by the Commissioner of the Federal Capital on the company's holdings in Kuala Lumpur consisting of petrol filling and service stations. The point at issue is whether the underground tanks at such stations are rateable.

This same question had been raised and decided in the company's favour by Adams J. in Muar two years ago: see *The Shell Company of the Federation of Malaya* v. *President, Town Council, Bandar Penggaram, Batu Pahat.*[1] Notwithstanding that decision, however, the Commissioner has included in the annual value of the company's holdings an element of value attributable to the underground storage tanks. The company's contention is that such tanks are not rateable.

The facts are not in dispute. The general design and construction of petrol-filling stations